NOTES OF CASES.

Fraudulent Conveyances—Transactions Invalid—Prior or Subsequent Creditors—Running Accounts.—Whether one is a prior or a subsequent creditor in relation to a voluntary conveyance must be ascertained solely by reference to the time the debt was contracted, and when a running or continuous account extends over the date of a voluntary conveyance, the creditor, as to the part of the indebtedness contracted prior to the conveyance, is a prior creditor, and, as to the part contracted subsequent to the conveyance, he is a subsequent creditor. And if payments are made thereon, without particular direction as to application by debtor, or application by act of creditor, the law applies the payments to the oldest items to discharge them. Peale *v.* Grossman (Supreme Court of Appeals of West Virginia, Nov. 28, 1911), 73 S. E. 46.

Principal and Agent—Ratification of Contract—Acceptance of Benefits.—And by the same court it was held that where the owner of the equitable title to land by an executory contract or title bond, authorizes his vendor to renew a prior lease for oil and gas covering the larger tract, of which his land is a part, he thereby constitutes his vendor his agent to contract for such lease, and by accepting, through his agent, his share of rental or commutation money, accruing under such lease, he thereby ratifies the same, concluding and estopping him from thereafter setting up title to his land in hostility to that of such lessee, and the statute of frauds is no defense to the rights and claims of such lessee. Mustard *v.* Big Creek, etc., Co. (W. Va.), 72 S. E. 1021.

Exceptions, Bill of—Record—Vacation Order of Judge.—A vacation order made by the trial judge, under his signature and seal, within the time fixed by law for saving and certifying bills of exceptions, which order is in itself a veritable bill of exceptions, specifically pointing out and identifying by certain and sure references the stenographer's transcript of evidence and other papers pertaining to the trial, and declaring that they are thereby made a part of the record, operates to bring into the record the evidence and papers referred to, though not embraced in formal bills of exceptions. Darnell *v.* Wilmoth (Supreme Court of Appeals of West Virginia, Nov. 14, 1911), 72 S. E. 1023.

Logs and Logging—Deed of Standing Timber—Construction.—A particular enumeration of the kinds of standing timber meant to be conveyed, contained in the granting clause of a deed, will not be enlarged by a separate and subsequent general clause stating that the intention of the parties is to convey all the timber included in

the bounds named in the deed, but the general words used in the latter clause will be held to apply to timber ejusdem generis with that specifically named. Darnell *v.* Wilmoth (Supreme Court of Appeals of West Virginia, Nov. 14, 1911), 12 S. E. 1023.

Pleading—Declaration—Ad Damnum Clause.—A declaration in an action, even though sounding in damages, is not demurrable because it does not state the amount of damages claimed in the form of an averment. It is sufficient if it appear in any part of the declaration. The ad damnum clause, while consistent with good form in pleading, is not indispensable. Jenkins *v.* Montgomery (Supreme Court of Appeals of West Virginia, Nov. 21, 1911), 72 S. E. 1087.

The Hebert Case.—As our readers are doubtless aware, the cause celebre of Hebert *v.* Hebert came before Mr. Justice Charbonneau on appeal from Judge Laurendeau. The former holds that the Ne temere decree of the Roman Catholic Church has no civil effect whatever in relation to marriages, and has no control over the civil law of the province of Quebec; and that any minister, Protestant or otherwise, qualified to solemnize marriage between parties capable of entering into the bonds of matrimony, can legally and effectually perform the ceremony no matter what the religious faith of either of the parties may be. The formal judgment is as follows:

"Basing itself on the motives above given in detail, the court annuls the judgment of March 23, 1911, declares the marriage of the said Eugene Hebert and Dame E. Cloutre, celebrated on July 14, 1908, before the Rev. Wm. Timberlake, upon production of a license, dated July 3, 1908, good and valid; declares that the decree proclaimed by the Congregation of the Council of the Roman Catholic Church on August 2, 1907, beginning with these words, 'Ne Temere inirentuur,' has no civil effect on said marriage, that the decree of the Archbishop of the Diocese of Montreal, dated November 12, 1909, produced in this case by the plaintiff, has no judicial effect in said case, and rejects the opposition of the defendant opposant and of the tierce opposant es qualite as to the other conclusions therein taken, each party paying his own costs from the date of the two inscriptions of the defendant opposant, and of the tierce opposante es qualite respectively, dated December 5, 1911."

This conclusion meets generally with the approval of the profession as a legal proposition; while from the wider standpoint it commends itself to the intelligence and spirit of a free country; for, surely, it cannot be that any ecclesiastical body can at will bastardise children who are the fruit of a de facto marriage, solemnized between persons who innocently think themselves to have been made man and wife according to the law of the land. However, the whole question will soon be settled by the case submitted by the Crown to the Supreme Court of Canada.—Canada Law Journal (March).